

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  SERVISENSE.COM, INC.	DOCKET NO. FCU-02-17
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**ORDER REVOKING CERTIFICATE**

(Issued October 18, 2002)

On August 12, 2002, Utilities Board (Board) staff learned that a company using the name "The Iowa-Nebraska Telephone Company" (Iowa-Nebraska) was advertising local exchange services in Iowa without a certificate of public convenience and necessity, as required by Iowa Code § 476.29 (2001), or registering with the Board, as required by 199 IAC 22.23(3) (2002). Board staff contacted a series of representatives of Iowa-Nebraska and related entities, including Eastern Telephone, Inc. (Eastern), and ServiSense.com, Inc. (ServiSense). ServiSense is an authorized provider of local exchange telecommunications services in Iowa, holding a certificate of public convenience and necessity issued pursuant to § 476.29.

On August 27, 2002, as a result of the staff contacts, the Board issued an order to show cause, stating that it appeared Iowa-Nebraska and Eastern may be (1) offering land-line local telephone service in Iowa without first obtaining a certificate of public convenience and necessity from the Board, as required by § 476.29; (2) offering service without having a valid tariff on file with the Board, as required by

§ 476.4; (3) serving the former customers of ServiSense without having obtained each customer's authorization to change the service, as required by § 476.103(3) and the Board's rules at 199 IAC 22.23; and (4) providing service without an up-to-date registration form, as required by 199 IAC 22.23(3).

The Board opened this formal complaint docket pursuant to § 476.3(1) to investigate the actions of ServiSense, Iowa-Nebraska, and Eastern. Those companies were given an opportunity to show cause why the Board should not find them in violation of one or more of the statutory provisions cited above or such other provisions of chapter 476 and the Board's rules as may develop through the course of this proceeding. They were also given an opportunity to show why the Board should not take appropriate action if such violations are found, including revocation of ServiSense's certificate of public convenience and necessity, rejection of its tariff, prohibition of other service providers from billing on behalf of the violators or providing exchange access services to them, seeking an injunction or other appropriate relief in district court, or taking such other action as may be appropriate. Further, the Board ordered that ServiSense, Iowa-Nebraska, and Eastern may not bill any Iowa customers for any services currently being provided by any or all of them in violation of Iowa law and that such arrangements must continue until further order of the Board. The companies were directed to file with the Board complete lists of their Iowa customers in order to allow for notification of the customers that they are not required to pay for any services being provided in violation of Iowa law.

On September 6, 2002, Eastern and ServiSense filed a response to the order to show cause, stating that ServiSense was issued a certificate of public convenience and necessity on September 21, 2000. On August 20, 2001, ServiSense filed a petition under Chapter 11 of the Bankruptcy Code in the U. S. Bankruptcy Court, District of Massachusetts, and on February 11, 2002, as a part of that proceeding, Eastern purchased substantially all the assets of ServiSense.

Eastern and ServiSense further state that on June 20, 2002, Eastern entered into a Marketing and Operating Agreement with OnSystems Technology, LLP (OnSystems). As a part of that agreement, Eastern authorized OnSystems or its nominee (in this case, Iowa-Nebraska) to acquire customers under the reseller ID account of OnSystems and pursuant to ServiSense's certificate. The customers were to remain on the ServiSense system until such time as Iowa-Nebraska received appropriate authority, when the customers would be transferred. The agreement specifically required that OnSystems and its nominees be in compliance with all appropriate regulatory requirements.

Eastern and ServiSense state they learned "substantial disturbing information about which [they were] previously completely unaware" when they received a letter from Board staff on August 23, 2002 (attached to the order to show cause as Attachment A). In response to the staff letter, on August 26, 2002, Eastern and ServiSense sent a letter to OnSystems informing OnSystems of the staff letter and instructing OnSystems to refrain from any and all marketing to and or provisioning of

any more customers "under our reseller code, pending final and satisfactory disposition of these matters by the various regulatory agencies." A copy of the letter was attached to the response. Eastern and ServiSense represent that the "letter, together with follow up discussions, has effectively terminated all marketing to and provision of customers in the State of Iowa before any [OnSystems] customers were provisioned." (Emphasis in original.)

Eastern and ServiSense asserted that as a result of these actions, any potential harm to Iowa residents from the circumstances that are the subject of this investigation has been removed. They stated that ServiSense currently has only one customer in Iowa; that Iowa-Nebraska is, to the best of their knowledge, no longer advertising or marketing in Iowa (or anywhere), and that Iowa-Nebraska has no authority to provision a customer through ServiSense. Eastern and ServiSense conclude that all of the Board's concerns about Eastern or ServiSense should be alleviated and no further Board action is necessary.

The Board did not agree, finding that the response of Eastern and ServiSense failed to address all of the relevant issues, did not provide sufficient information, and was insufficient to satisfy the Board that Eastern, Iowa-Nebraska, and ServiSense are not continuing to violate Iowa law. Accordingly, on September 16, 2002, the Board gave notice to ServiSense that its certificate of public convenience and necessity would be revoked, pursuant to Iowa Code § 476.29(9), unless ServiSense (or Eastern, on behalf of ServiSense) filed a request for hearing or sufficient

information to establish, without a hearing, that the certificate issued to ServiSense should not be revoked. In the absence of the necessary documents or a request for hearing, the Board intended to revoke the certificate of public convenience and necessity issued to ServiSense and direct all certificated local exchange service providers in Iowa to cease providing facilities to and exchanging local communications traffic with ServiSense.

On September 23, 2002, Eastern and ServiSense filed their response to the Board's order of September 16, 2002. The response included copies of the bankruptcy court's order authorizing the sale of the assets of ServiSense; the February 1, 2002, "Management Agreement" between ServiSense and Eastern; the June 20, 2002, "Marketing & Operating Agreement" between Eastern and OnSystems; and a September 12, 2002, letter from Eastern to OnSystems providing notice of Eastern's termination of the Marketing & Operating Agreement. Eastern alleged that these documents, combined with the absence of any demonstrated harm to any Iowa resident, were sufficient to show Eastern's intent to "operate within the laws and rules of the State of Iowa." Eastern and ServiSense did not request a hearing.

The Board finds the response filed by Eastern and ServiSense is inadequate to prevent revocation of ServiSense's certificate. The response does not demonstrate an intent to operate in a manner consistent with the laws of the State of Iowa; instead, it demonstrates that Eastern, OnSystems, and ServiSense have made

no effort to comply with the applicable statutes and regulations. Instead, the response demonstrates that Eastern and ServiSense have knowingly operated illegally in Iowa and have made material misrepresentations to the Board in their pleadings in this docket.

First, in the September 6, 2002, response filed by Eastern and ServiSense, they state that the Bankruptcy Court order approved the continuing operation of ServiSense under the management of Eastern until Eastern could obtain its own authorizations, give appropriate notice to customers, and take other steps to effect the transfer. However, the Bankruptcy Court order attached to the September 23, 2002, response makes no mention of continued operation of ServiSense; it is silent with respect to the matters that Eastern and ServiSense claim it addressed. Moreover, the Bankruptcy Court order is dated February 12, 2002, over eight months ago, yet Eastern still has not taken any steps to obtain its own certificate of public convenience and necessity in Iowa. If Eastern truly intended to "operate within the laws and rules of the State of Iowa," it would long ago have filed an application for transfer of the certificate.

Second, the Management Agreement between Eastern and ServiSense indicates that they have applied to various unidentified state regulatory agencies for authorization to transfer Eastern's certificates. These applications are referred to as the "Commission Consents." Further, Article 4.1 of the Management Agreement commits the parties to work diligently to obtain for Eastern the necessary

Commission Consents. These provisions demonstrate that Eastern and ServiSense are, and were, aware of their obligation to transfer Eastern's certificate, but no filing has ever been made with the Board for that purpose. The acknowledgement of the obligation to transfer the ServiSense certificate, combined with the failure of the parties to seek that transfer at some point within the last eight months, all without any explanation, does not demonstrate an intent to comply with Iowa laws; instead, it demonstrates a complete and total disregard for the law. These actions require that the Board revoke the certificate issued to ServiSense.

Furthermore, the inaccuracies in the responses of Eastern and ServiSense continue to develop. For example, on October 11, 2002, the Board's customer service staff received a verbal customer complaint stating that about 45 days before, the customer switched her local and long distance service from Qwest Corporation to "Phone Company Services Group," but when the service was changed the service was unusable and the customer was unable to reach anyone at the Phone Company Services Group's customer service number, 866-761-5580. Board staff inquired into the matter and determined that the customer had changed service in response to a television advertisement for Iowa-Nebraska and that Qwest's records indicated the customer's telephone number was a resold account assigned to ServiSense. It is possible that the customer's order was in process at the time Eastern and ServiSense purported to terminate their relationship with OnSystems and Iowa-Nebraska, but even so the apparent failure of Eastern and ServiSense to take steps

to prevent customer transfers, with predictably unsatisfactory results, is a matter of great concern. The Board does not rely on this complaint as a basis for its revocation of the certificate issued to ServiSense, but concerns such as this will have to be explained, in detail and to the Board's complete satisfaction, before any future certificate will be issued to Eastern, ServiSense, Iowa-Nebraska, OnSystems, Phone Company Services Group, or any company related to, affiliated with, or sharing management with any of those entities.

**IT IS THEREFORE ORDERED:**

1. Pursuant to Iowa Code § 476.29(9), ServiSense.com, Inc., is notified that the certificate of public convenience and necessity issued to ServiSense on September 21, 2000, and identified as Certificate No. 0223, is hereby revoked.
2. ServiSense shall continue to provide local exchange and intrastate interexchange telecommunications services to any and all customers it may have in Iowa, without charge, for a period not to exceed 60 days while the customers are notified that they must change their service providers.
3. Qwest Corporation is directed to work with staff to identify all of the Iowa customers of ServiSense so that Board staff may contact those customers and explain to them the need to change their telecommunications service providers.
4. Beginning 60 days from the date of this order, all local exchange carriers in Iowa are directed to cease providing services to ServiSense.com, Inc., Eastern Telephone Company, Iowa-Nebraska Telephone Company, OnSystems



Technology, LLC, and/or Phone Company Services Group for resale to Iowa local exchange telecommunications customers.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 18<sup>th</sup> day of October, 2002.